

FCC MAIL SECTION

Federal Communications Commission

DA 98-240

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Before the

Federal Communications Commission

Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-185
Table of Allotments,)	RM-9080
FM Broadcast Stations.)	RM-9197
(Vergennes, Vermont, Willsboro)	
and Malone, New York) ¹)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: May 6, 1998**Released: May 15, 1998**

By the Chief, Allocations Branch:

1. At the request of Watertown Radio Associates Limited Partnership ("petitioner"), licensee of Station WXPS(FM), Channel 244A, Vergennes, Vermont, the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 13164 (1997), proposing the reallocation of Channel 244A from Vergennes, Vermont, to Willsboro, New York, and the modification of Station WXPS(FM)'s license to specify Willsboro as its community of license. Petitioner filed comments. Cartier Communications, Inc. ("Cartier"), licensee of Station WVN(FM), Channel 243A, Malone, New York, filed a counterproposal.² In response to the counterproposal petitioner and Cartier filed joint reply comments.

2. In its counterproposal, Cartier requests the substitution of Channel 243C3 for Channel 243A and the modification of Station WVN(FM)'s license to reflect the upgrade at Malone, New York. In addition, Cartier supports petitioner's proposal to reallocate Channel 244A to Willsboro, New York, if new reference coordinates are used so as to accommodate Station WVN(FM)'s upgrade. Cartier submits that by adopting its proposal, no choice needs to be made as to whether Willsboro receives a first local service or whether Malone should receive upgraded service from Station WVN(FM) since both can co-exist with the modification of the Willsboro transmitter site. In reply comments, petitioner and Cartier state they have agreed to cooperate with each other to achieve their respective goals and request that the Commission adopt the counterproposal.

3. Based on the pleadings before us, we believe the public interest would be served by

¹ The community of Malone, New York, has been added to the caption.

² Public Notice of the counterproposal was given on November 26, 1997, Report No. 2239.

reallotting Channel 244A from Vergennes, Vermont, to Willsboro, New York and substituting Channel 243C3 for Channel 243A since these allotments will enable Station WVNV(FM) to upgrade its facilities at Malone, New York, as well as permitting Station WXPS(FM) to provide a first local aural transmission service to Willsboro, New York. The reallotment of Channel 244A to Willsboro will not remove Vergennes' sole local transmission service as Station WIZN-FM will remain in the community. Willsboro, with a 1990 U.S. Census population of 1,736 persons, will receive its first local aural service. Our engineering analysis shows that the reallotment of Channel 244A will enable Station WXPS(FM) to serve 89,451 persons in area of 670 square kilometers. We recognize that the removal of Station WXPS(FM) from Vergennes will create a reception service loss to 10,207 persons within an area of 670 square kilometers. However, our engineering studies have confirmed that the population within the loss area will continue to receive service from at least five full-time stations, thus the reallotment of Channel 244A from Vergennes, Vermont, to Willsboro, New York, will not create any under-served areas. In addition, we will adopt Cartier's proposal to change the reference coordinates for Channel 244A at Willsboro since this would permit Cartier to upgrade its facilities for Station WVNV(FM) at Malone, New York.

4. Channel 244A and Channel 243C3 can be allotted to Willsboro and Malone, New York, respectively, in compliance with the Commission's minimum distance separation requirements. We will impose a site restriction of 5.2 kilometers (3.2 miles) southeast of Willsboro for Channel 244A in order to accommodate the upgrade of Station WVNV(FM) at Malone.³ Channel 243C3 at Malone will require a site restriction 16.0 kilometers (10.0 miles) northeast.⁴ Since both allotments create short-spacing conflicts to Canadian stations, we have obtained Canadian approval for Channel 244A at Willsboro and Channel 243C3 at Malone as specially negotiated short-spaced allotments. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WXPS(FM) to specify Willsboro, New York, as its community of license on Channel 244A, in lieu of its use at Vergennes, Vermont. As proposed, we will also modify Cartier's license for Station WVNV(FM) to specify operation on Channel 243C3 in accordance with the provisions of Section 1.420(g) of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 29, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Vergennes, Vermont	294C2

³ The coordinates for Channel 244A at Willsboro, New York, are 44-19-20 NL and 73-21-00 WL.

⁴ The coordinates for Channel 243C3 at Malone, New York, are 44-54-40 NL and 74-06-40 WL.

Willsboro, New York 244A

Malone, New York 243C3

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Watertown Radio Associates Limited Partnership for Station WXPS(FM), IS MODIFIED to specify operation on Channel 244A at Willsboro, New York, in lieu of its use at Vergennes, Vermont, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cartier Communications Inc. for Station WVNV(FM), Malone, New York, IS MODIFIED to specify operation on Channel 243C3, in lieu of Channel 243A, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Watertown Radio Associates, licensee of Station WXPS(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and Cartier Communications, Inc., licensee of Station WVNV(FM), is required to submit a fee required for the applications to effect its upgrade.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau